FUTURE JUSTICE PROJECT

JUSTICE DENIED: A guide to miscarriages of justice for MPs

If a constituent writes to you from prison - or else their loved ones turns up at your weekly surgery - saying that they (or their loved one) have been sent to prison for a crime that they didn't commit, this short guide is here to help. It explains how to navigate one of the most little understood and problematic parts of our justice system →

Justice denied:

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A guide on miscarriages of justice for MPs

Sadly, the odds against your constituent clearing their name couldn't be more steeply stacked against them. To have a conviction overturned, in most cases they would have to apply to an organisation that few people, including lawyers, have heard of. It is called the Criminal Cases Review Commission (CCRC).

We have a prison population of close to 90,000 and every year about 1,400 people, mainly prisoners, write to the CCRC which is based in Birmingham to have their cases looked at. Just 25 cases last year were sent back to the Court of Appeal for review (that number dropped to a dozen cases a few years ago) – so between 1 and 2% of applications to the CCRC are sent back to the courts to be looked at again. Over the CCRC's 25-year history, roughly two-thirds of its referrals end up with convictions being overturned.

So, not great odds.

If your constituent does manage to have their wrongful conviction quashed, they are highly unlikely to receive a penny for those lost years - in the last nine years, just 25 people have received compensation for being wrongly convicted.

These are some of the reasons why the All-Party Parliamentary Group in Miscarriages of Justice was set up in 2017 by the immediate past chairs Barry Sheerman MP and Sir Bob Neill. Our group has been instrumental in shining a light on the criminal appeals system - the Law Commission is currently reviewing the system as a result of our recommendation - and highlighting concerns over its fitness to correct injustices or address the structural problems that lead to miscarriages of justice.

Presently, the parliamentary group is looking at the state of the forensic science sector, concerns over legal aid and the quality of legal representation as well the lack of compensation and care for the wrongly convicted post-release.

Finally, we are fighting hard to reform the law on joint enterprise, the 300-year-old legal doctrine brought back into use under the guise of prosecuting 'gang violence'. The misuse of joint enterprise has led to innocent people - many young, working class and Black boys - wrongly convicted. Last year I introduced the Joint Enterprise (Significant Contribution) Bill to tighten up the law the has destroyed the lives of so many (and to ensure criminal liability only applies to people who make a 'significant contribution' to an offence). The fight goes on.

If you are interested in helping us with our important work or else want to find out more, please let us know.

Official 2024 portrait of **Kim Johnson MP**, presumptive Chair of the All-Party Parliamentary Group in Miscarriages of Justice

In June this year, 1.2 million people tuned in to watch a documentary, The Wrong Man: 17 years behind bars, about the wrongful conviction of Andrew Malkinson. Nearly 15 million people have watched the ITV drama series, Mr Bates vs The Post Office, about the harrowing treatment of 700 wrongfully convicted sub-postmasters.

This briefing is prepared by the new charity the Future Justice Project (www.futurejustice.org.uk) which runs the secretariat for the All-Party Parliamentary Group on Miscarriages of Justice chaired by Kim Johnson MP. It is an explainer to help you and your constituent navigate the complex and problematic system of criminal appeals as well as to better understand issues concerning miscarriages of justice, their frequency and the ability of the legal system to deal with them and for justice to be served.

Members of Parliament are on the frontline of this system where the often appalling treatment of individuals who believe they have been wrongfully convicted intersects with structural issues within our criminal justice system. Of course, it is parliament that has the power to enact reforms that could prevent these human tragedies and to create a system better able to assist their correction.

If you are interested in the work of the APPG, see contacts at end.

Beyond the individual cases you may become involved in within your constituency, the broader consequences of miscarriages of justice are grave. Victims of crimes, as well as the wrongfully accused, have their lives shattered and the public loses faith in our criminal justice system.

This is of particular importance at a time when our underfunded and overwhelmed justice system is at a standstill. A crime committed today may not reach court until 2027 as a result of backlogs.

As the public inquiries into both the Malkinson and Post Office cases rumble on, and yet more failures are uncovered, public opinion may further galvanise behind reforms to the system for criminal appeals which continues to fail so many people.

An enhanced prisoner writing a letter home in his cell on H wing at YOI Aylesbury.
Pictures by **Andy Aitchison**

Navigating the system:

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How criminal appeals work

A person who has been convicted of a criminal offence can challenge either the conviction or the sentence by way of an appeal. A tension exists between the system's desire for justice versus a desire for finality – it wouldn't be in anyone's interests for people to be able to re-open cases ad infinitum but justice should always be the highest aim.

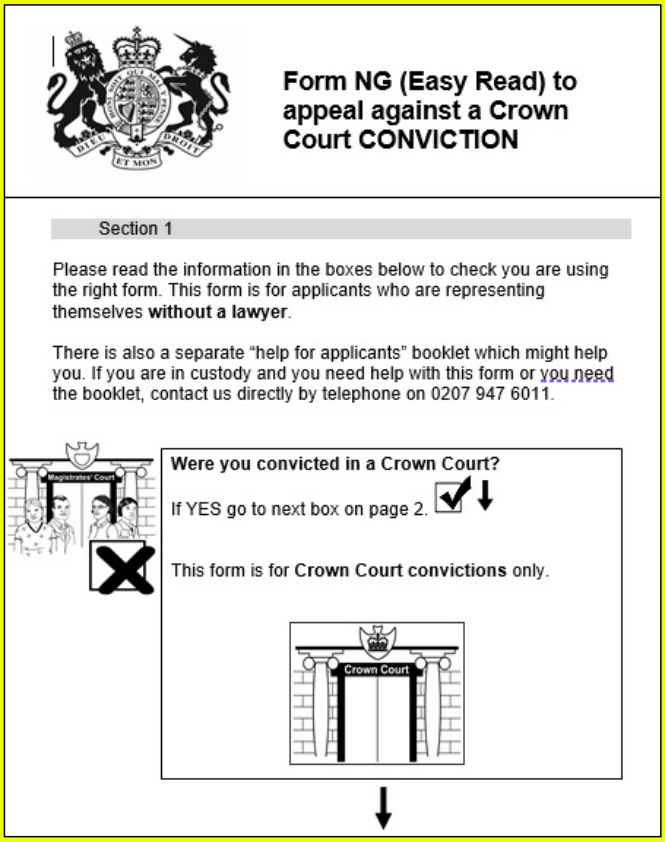
Someone who has been wrongly convicted can apply directly for an appeal - but only within tight constraints (less than 28 days post-conviction and with the permission of the courts).

Otherwise, they have to apply to a little-known organisation called the Criminal Cases Review Commission (CCRC), a watchdog-style body established to re-investigate these cases. If appropriate, the CCRC can send (or 'refer') the case to the Court of Appeal so the person has another chance of overturning their conviction.

In order for that to happen, the CCRC must take the view that the applicant has a 'real possibility' of clearing their name – see later - and to do that you need new evidence or new arguments. In other words, you can't simply argue that the jury 'got it wrong'.

For the CCRC to send your case back to the appeal court, it needs to identify something new and significant – in its words, 'capable of making the court view your case differently'. This could be fresh evidence or else a new legal argument (e.g. a new witness or a new scientific development).

The CCRC has a guide for applicants (here).



Form NG (Easy Read) to appeal against a Crown Court CONVICTION

Section 1

Please read the information in the boxes below to check you are using the right form. This form is for applicants who are representing themselves **without a lawyer**.

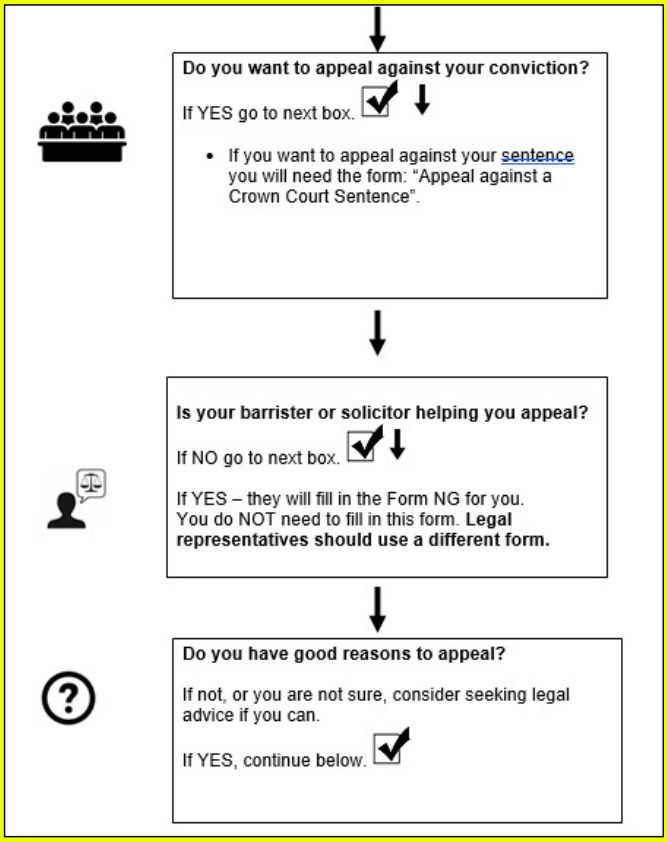
There is also a separate "help for applicants" booklet which might help you. If you are in custody and you need help with this form or you need the booklet, contact us directly by telephone on 0207 947 6011.

Were you convicted in a Crown Court?

If YES go to next box on page 2.

This form is for **Crown Court convictions** only.

Crown Court



Do you want to appeal against your conviction?

If YES go to next box.

- If you want to appeal against your sentence you will need the form: "Appeal against a Crown Court Sentence".

Is your barrister or solicitor helping you appeal?

If NO go to next box.

If YES – they will fill in the Form NG for you. You do NOT need to fill in this form. **Legal representatives should use a different form.**

Do you have good reasons to appeal?

If not, or you are not sure, consider seeking legal advice if you can.

If YES, continue below.

An easy-read guide for prisoners provided by the MoJ on how to appeal a conviction

Problems at the CCRC:

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The miscarriage of justice watchdog

The CCRC was set up in 1997 following high-profile miscarriages of justice that caused widespread outrage in the late 1980s and early 1990s, including the Guildford Four, Birmingham Six and Stefan Kizsko. These scandals undermined public confidence in the criminal justice system.

The CCRC was the first state-funded body in the world established to help those claiming to have been wrongfully convicted – with the power to reinvestigate their case and refer it to the Court of Appeal. The model has since been followed in Scotland, Norway, and New Zealand.

Independence was integral to the CCRC when it was established more than 25 years ago - both independence from the courts and government. It was established in Birmingham (in recognition of the 'Birmingham Six' scandal) and staffed by investigators with a range of experiences. Its independence was seemingly guaranteed by statute and resided in the power of its 11 commissioners. For a case to be sent back to the Court of Appeal, it needs the backing of three commissioners.

Over the course of its 25 year-plus life, the CCRC has never had the profile of other publicly-funded bodies charged with important oversight of our institutions. This lack of public awareness was a contributing factor to its fate as the body suffered from underfunding throughout its life.

Of all the institutions in our justice system, the CCRC has received the most swingeing cuts since 2010. Since then, the CCRC has lost more than a third of its funding and has seen caseloads double. The commissioners, who until 2012 were appointed for five-year terms on a full-time or near full-time basis on salaries, now mostly work one day a week from home on a day rate.

Concerns about the CCRC came into sharp focus in 2016 and 2017 when the number of cases it referred to the Court of Appeal collapsed: 12 and 13 for the two years respectively. As a result of the collapsing referral rate, the Labour MP Barry Sheerman and Tory peer Sir Bob Neill set up the APPG. The APPG established the Westminster Commission into Miscarriages of Justice investigation into the CCRC chaired by Lord Edward Garnier and Baroness Vivien Stern which reported in 2021.

The Westminster Commission investigation found that of all the parts of our challenged justice system, its 'safety net' organisation had borne the brunt of austerity.

As well as calling for more funding, the Westminster Commission called on the CCRC to demonstrate its independence from

THE REAL TEST POSSIBILITY SAYS:

A reference of a conviction, verdict, finding, or sentence shall not be made unless the Commission consider that there is a real possibility that it would not be upheld were the referral to be made

The Law Commission has been asked to review the law around appeals in criminal cases, including the tests applied by the Court of Appeal and the Criminal Cases Review Commission based on the recommendation of the 2021 Westminster Commission on miscarriages of justice report.

This project is currently in the pre-consultation stage, find out more here

government. Lord Garnier, a former Solicitor General, said: 'We need to re-instil that sense of independence in the CCRC and its leadership which the originating legislation envisaged... It has become something of a Cinderella public body, metaphorically stuck right at the end of some dark corridor within the Ministry of Justice. It needs to be out there punching above its weight.'

The CCRC decides which cases to investigate based on the 'real possibility test', i.e. it can only refer a conviction to the Court of Appeal if it considers that there is a 'real possibility' that the appeal court would not uphold it – that it is 'unsafe' and must be overturned.

Critics, including the Westminster Commission and the House of Commons' justice committee in its 2015 report, argue that constraint of the statutory test has led to an overly 'deferential' CCRC which is effectively subservient to the Court of Appeal.

It is argued that an increasingly conservative Court of Appeal has led to fewer and fewer referrals from the CCRC. Some critics go further and argue that this test is entirely contrary to the spirit and purpose for which the CCRC was established – such critics argue the 'watchdog' is simply second-guessing what the Court of Appeal may think about a case rather than assessing whether a miscarriage of justice may have taken place.

It is relevant in this context to note that the CCRC has referred just two cases to the Court of Appeal for a second time, demonstrating (critics would say) a lack of willingness of the commission to stand up to the Court of Appeal.

PROSPECTS OF SUCCESS:

How the odds are stacked

If you have a constituent claiming to be wrongly convicted - and every year 1,500 people write to the CCRC claiming to be wrongly convicted - what are their chances of having their cases reviewed by the courts? The concerns of critics are borne out by the statistics.

Out of 1400 people who typically apply to the CCRC to have their case reviewed each year, 2% was the 'referral rate' from the CCRC to the Court of Appeal in 2022/23.

*89% of these cases were successfully overturned

APPEAL's response to the Law Commission's consultation on criminal appeals

As noted earlier, concerns about the CCRC came into sharp focus in 2016 when the referrals collapsed to a dozen from a 33-a-year average over the first 20 years.
At a 2023 Future Justice Project event, the academic Dr Steve Heaton argued the total figure of referrals was misleading and not a reliable indicator of performance.

According to Dr Heaton, the CCRC has referred 227 cases in the last eight years. He argued that the commission's 'successes' were overstated because numbers were inflated by 'group referrals' (for example, the Post Office Horizon cases) – often cases where the commission has had little involvement.

Dr Heaton estimated that just 16 cases had been overturned due to the CCRC's investigative efforts in the last eight years.

This suggests an extremely conservative approach by the watchdog.

Bearing in mind these figures, it is unavoidable that miscarriages of justice are going under the radar. The inability of people trapped in prison for crimes they did not commit - based on the inefficacy of a government funded watchdog - should disturb us all.

"The 2% referral rate suggests that, if anything, the CCRC is presently adopting a more conservative approach to the real possibility test, and there are many examples of cases initially rejected by the CCRC and later found to be a miscarriage of justice, including Nealon, Shrewsbury 24 and Malkinson"

Justice delayed:

The miscarriage of justice watchdog

Problems at the CCRC in recent years have been compounded by delays, with **people** expecting to **wait years** (often in prison) **for decisions to be made.**

Jason Moore is currently serving an 18-year prison sentence for the murder of Robert Darby. He has always maintained his innocence, and has even been supported by Darby's brother who also insists the police got the wrong man.

The Bishop of Stepney, Joanne Grenfell, has been campaigning on Moore's behalf, recently writing to the Justice Secretary about his case. Moore applied to the CCRC in 2021 but his application was rejected without them reinvestigating the case.

In her letter, Grenfell wrote:

"The injustice faced by Andrew, Jason and others is compounded by continuous delays in getting their cases reviewed. The efficacy, fairness, timeliness of the review process affects justice for everyone. That any of us could be imprisoned in Jason's circumstances is a disturbing enough thought, but that we would then spend years waiting to even have our case reviewed is harrowing."

Victor Nealon, wrongfully convicted of rape, spent a whole decade longer in prison than would have been the case if the CCRC hadn't repeatedly declined to analyse relevant DNA material that eventually exonerated him.

This was despite repeated reasonable requests from Nealon and his lawyers. He was finally cleared after 17 years in prison after the CCRC looked at his case for a third time.

Nealon's lawyer, Mark Newby, said at the time:

"The real problem is not what happened to Victor Nealon but the machinery of justice's willingness to perpetuate such cases and when cases go wrong to simply stick a plaster on them and move on as if nothing happened.

This is the drive to maintain the status quo and perceived integrity of the system at all costs."

Andrew Malkinson would have had his conviction overturned **seven years earlier** had the CCRC properly reinvestigated his case when he first applied to the body.

The role of the Court of Appeal

The Court of Appeal's reluctance to usurp the decisions of juries is another obstacle to overturning miscarriages of justice. Many who defend the principles and working of the CCRC say that criticism would be better levelled against the appeal court which so rarely overturns criminal convictions.

This has, in part, been blamed on the court's propensity to look at fresh evidence on the safety of a conviction in an isolated or atomised way. The whole case is rarely examined holistically, despite the fact that very often a multitude of things have gone wrong to lead to the wrongful conviction.

In the case of Tony Stock, jailed in 1970 for a bank robbery he didn't commit, it has been said the case against him 'unravelled by degrees'. His case has been back to the Court of Appeal on four separate occasions, each time the court examining new evidence but not to the extent that they could overpower the weight of a jury finding him guilty. A third application on behalf of Tony Stock has been with the CCRC for the last seven years.

EXPERTS ON THIS CASE SAY IT IS ILLUSTRATIVE OF THE PROBLEM THAT →

THE COURT OF APPEAL IS RELUCTANT TO ENGAGE WITH OR EVEN RECOGNISE THE ISSUE OF MISCARRIAGES OF JUSTICE.

Compensation

Months after leaving prison, Andrew Malkinson was reliant on Universal Credit and food banks, unable to work due to the mental ill-health he was suffering as a result of his wrongful imprisonment. As he started to put forward his case that he should be compensated for the fact that he was imprisoned for 17 years for a crime he did not commit, he described feeling 'trapped in parliamentarians' paranoia that swathes of the people whose convictions are quashed might be guilty.'

The coalition government radically overhauled the compensation regime in 2014 when a change to the law meant those who had already been found to have been victims of miscarriages of justice then also had to prove they were innocent 'beyond reasonable doubt' to receive compensation for their ordeal. This change to the law has effectively stopped payouts for miscarriages of justice in almost all cases. The lack of an adequate scheme of compensation has been identified as 'a scandal'

A recent case in the European Court of Human Rights examined the UK's compensation regime and whether it was compatible with the right to the presumption of innocence. The case was brought by Sam Hallam and Victor Nealon, who spent a total of 24 years in prison for crimes they didn't commit and were both denied compensation.

Although the ruling in Strasbourg did not go their way, the dissenting judges argued that the UK has 'a highly undesirable attitude towards the presumption of innocence.'

Statistics from the Ministry of Justice released last year show:

Less than 7% of applications for compensation by victims of miscarriages of justice has been successful in the last 8 years

From **2016 - 2024** only **£2.4m** was awarded to **35** successful claimants

This is compared to **1999-2007** when **£81m** was paid out to **306** successful applicants

RESOURCES

The miscarriage of justice watchdog
CCRC (see here for guidance on how to apply)

Specialist organisations that support victims of miscarriages of justice and investigate cases
APPEAL
Inside Justice

Lawyers
Law Society directory
Bar Council directory
Criminal Appeal Lawyers Association

Campaign groups
JENGbA (Joint Enterprise Not Guilty by Association)
FACT (Falsely Accused Carers and Teachers)
FASO (False Allegations Support)
MOJO - Scotland

Others
Future Justice Project
All-Party Parliamentary Group on MIscarriages of Justice
The Howard League for Penal Reform
JUSTICE
Liberty

CONTACT

To get in touch with the Future Justice Project,
email:
sam@futurejustice.org.uk

Visit our website:
futurejustice.org.uk

Twitter:
@futurejusticep

It should be noted that there are only a small number of organisations that support those claiming to be wrongly convicted. They tend to be charities, underfunded and overwhelmed with requests for help. There are a small number of solicitors' firms that have a genuine specialism in criminal appeals work - as opposed to general criminal defence firms who as a result of a 20-plus year freeze in legal aid rates have stopped undertaking these difficult cases. Some firms take cases on privately (campaign groups report exorbitant fees being charged by some firms).

FUTURE JUSTICE PROJECT

The **Future Justice Project** is a charity set up in June 2023 to **promote a criminal justice system that prevents miscarriages** of justice from happening and one that is willing and able to correct them.

We provide the secretariat for the All-Party Parliamentary Group on Miscarriages of Justice.

The APPG was formed in November 2017 to examine the structural problems within the criminal justice system which result in miscarriages of justice and prevent their correction. Since then, it has focused on the ability of the criminal justice system to identify and overturn miscarriages of justice and provided a forum to improve access to justice for those who have been wrongly convicted.

Our directors include **Barry Sheerman MP**, immediate past chair of the APPG on Miscarriages of Justice and the former Labour MP for Huddersfield with a career-long track record of reforming our criminal justice system; **Glyn Maddocks KC**, a leading criminal appeals specialist who has acted in many high profile miscarriages of justice cases over the last three decades; and **Dr Jon Robins**, journalist and criminology lecturer at Brighton University who specialises in writing about wrongful convictions .

The **aim** of the Future Justice Project is to discuss, debate and agree upon evidence-based policy recommendations that would:

- Assist the prevention of wrongful convictions and their correction
- Raise the profile of issues relating to miscarriages of justice including informing the public, the media and policy-makers,
- Challenge conventional wisdom, and
- Contribute towards the improved functioning of the criminal justice system in England and Wales.